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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,649	04/17/2001	Robert T. Baum	50107-473	6011

7590 11/15/2002

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EXAMINER

NGUYEN, TOAN D

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/835,649

Applicant(s)

ROBERT T. BAUM ET AL.

Examiner

Toan D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 6-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-24 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 9 and 12-17 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-3, 6, 9 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. (U.S. Patent 6,307,839 B1) in view of Araujo et al. (U.S. Patent 6,097,720).

For claims 1-2, 6, 9, 12, 16 and 17, Gerszberg et al. disclose dynamic bandwidth allocation for use in the hybrid fiber twisted pair local loop network service architecture, comprising the steps:

determining unused bandwidth on a common link of an access data network carrying subscriber traffic and over which the central content server located in a hub site and the at least one local content server located in a central office communicate (figure 1, col. 5 lines 36-38, col. 5 line 66 to col. 6 line 6 and col. 10 lines 21-25).

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However, Gerszberg et al. do not disclose transmitting content data stored on the central content server to the at least one local content server substantially on the determined unused bandwidth. In an analogous art, Araujo et al. in view of Gerszberg et al. disclose transmitting content data stored on the central content server to the at least one local content server substantially on the determined unused bandwidth (figure 1, col. 6 lines 35-65). One skilled in the art would have recognized data transmission to use teaching of Araujo et al. in the system of Gerszberg et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time invention, to use the data transmission as taught by Araujo et al. in Gerszberg et al.'s system with the motivation being to establish a point-to-point session (col. 6 lines 35-36).

For claims 3, Gerszberg et al. disclose the vertical services domain is located in a central office that provided Digital Subscriber Line (DSL) service to the at least one end user terminal (col. 11 lines 18-19).

For claim 13, Gerszberg et al. disclose the steps of determining unused bandwidth and transmitting content data utilize priority and queuing in at least one node of the access data network, to implement a minimum bandwidth and provide additional bandwidth as available on the common link, for the transmitting of the content data over the common link (col. 10 lines 21-62).

For claims 14-15, Gerszberg et al. disclose a congestion mechanism comprises Transmission Control Protocol (TCP) (col. 7 lines 47-50).

3. Claim 18-57 are allowed.

***Reasons For Allowance***

4. The following is an examiner's statement of reasons for allowance:

Regarding to claim 18, the prior art fails to teach a combination of the steps of:

programming code, carried by the at least one machine readable medium, for execution by at least one computer, wherein the programming code comprises:

a congestion mechanism for determining unused bandwidth on a portion of a common link of an access data network, carrying subscriber traffic and over which the first server and the at least one second server communicate; and

a first transmitting mechanism for causing transmission of content data stored on the first server to the at least one second server substantially on the determined unused bandwidth, in the specific combination as recite in claim 18.

Regarding to claim 25, the prior art fails to teach a combination of the steps of:

a logical communication circuit for content distribution between the central content server and the local content server provisioned through the access switch and the high-speed data link, the provisioning of the logical communication circuit for content distribution enabling communication of content data between the communication access node and the access switch over bandwidth unused by traffic on the layer-2 protocol logical communication circuits, in the specific combination as recite in claim 25.

Regarding to claim 39, the prior art fails to teach a combination of the steps of:

A logical circuit between the central content server and the local content server for transport of content data between the servers, wherein provisioning associated with the logical circuit in the hub data switch or in the access switch allocates otherwise available bandwidth to the logical circuit within the high-speed data link between the access switch and the hub data

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switch when not otherwise used by the customer traffic, in the specific combination as recite in claim 39.

**Objection To Claims, Allowable Subject Matter**

5. Claims 7-8 and 10-11 are objected to as being dependent upon a rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

**Response To Arguments**

6. Applicant's arguments filed on September 03, 2002 have been fully considered, but are moot in view of new ground(s) of rejection.

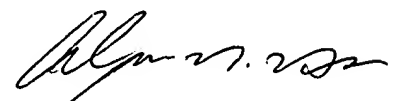
**Contact Information**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan D Nguyen whose telephone number is 703-305-0140. The examiner can normally be reached on Monday- Friday (7:00AM-4:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 703-308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

TN  
T.N.



ALPUS H. HSU  
PRIMARY EXAMINER